

Panaji, 27th January, 2017 (Magha 7, 1938)

SERIES II No. 43

OFFICIAL GAZETTE

GOVERNMENT OF GOA



PUBLISHED BY AUTHORITY

Note:- There are three Extraordinary issues to the Official Gazette, Series II No. 42 dated 19-01-2017 as follows:—

- (1) Extraordinary dated 20-01-2017 from pages 865 to 872 regarding Notifications Order from Department of Finance and Home respectively.
- (2) Extraordinary (No. 2) dated 23-01-2017 from pages 873 to 874 regarding Orders from Department of Finance.
- (3) Extraordinary (No. 3) dated 23-01-2017 from pages 875 to 968 regarding Notification from Department of Elections.

GOVERNMENT OF GOA

Department of Co-operation

Office of the Registrar of Co-operative Societies

Order

No. 50/3/(99)/ELEC/BOD/MACH/RCS/CZ/
/15(Suppl. File-II)/3974

Read: Letter No. 1/186/MAACH/ARCZ/2015 dated 16th November, 2016 received from the Asstt. Registrar of Co-op. Societies, Central Zone, Panaji-Goa to fill four vacant post of Directors of the Maruti Apartments Co-op. Housing Society Ltd., Mala, Panaji-Goa.

The Government of Goa is pleased to exempt the Maruti Apartments Co-op. Housing Society Ltd., Mala, Panaji-Goa from the provision of Section 60 of the Goa Co-op. Societies Act, 2001 for the term i.e. 2015 to 2020 by invoking the powers under Section 126A of the Goa Co-op. Societies Act, 2001.

By order and in the name of the Governor of Goa.

Meena H. N. Goltekar, Registrar & ex officio Joint Secretary (Co-op. Societies).

Panaji, 5th January, 2017.

Order

No. 50/3/(100)/ELEC/BOD/AMHS/RCS/NZ/
/15(Suppl. File-II)/3985

Read: Letter No. 14-123-00-TS/NZ/1108 dated 16th June, 2016 received from the Asstt. Registrar of Co-op. Societies, Central Zone, Panaji-Goa to fill two vacant post of Directors of the Anant Mukhtangan Co-op. Housing Society Ltd., Verem, Reis Magos, Bardez-Goa.

The Government of Goa is pleased to exempt Anant Mukhtangan Co-op. Housing Society Ltd., Verem, Reis Magos, Bardez-Goa from the provision of Section 60 of the Goa Co-op. Societies Act, 2001 for the term i.e. 2015 to 2020 by invoking the powers under Section 126A of the Goa Co-op. Societies Act, 2001.

By order and in the name of the Governor of Goa.

Meena H. N. Goltekar, Registrar & ex officio Joint Secretary (Co-op. Societies).

Panaji, 5th January, 2017.

Order

No. 7-461-2007/EST/RCS/4140

Read: Note No. WRD/SE-IV/F43/2016-17/16 dated 28-11-2016.

Ex-post facto sanction of the Government is hereby conveyed for extension of the deputation period of Shri Ramesh P. Naik, Asstt. Registrar of Co-op. Societies as Credit-in-Charge, Command Area Development Authority, Water Resources Department, Gogal, Margao, for one year w.e.f. 28-10-2016 to 27-10-2017 on standard terms and condition of deputation.

This order supersedes the earlier order No. 1-3-71/EST/RCS/(part-I) dated 28-10-2016.

By order and in the name of the Governor of Goa.

Meena H. N. Goltekar, Registrar & ex officio Joint Secretary (Co-op. Societies).

Panaji, 23rd December, 2016.

Department of Finance

Revenue & Control Division

Office of the Chief Secretary

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Order

No. 1/9/2016-Fin (R&C) (a)

Hon'ble Supreme Court of India has issued an Order dated 15-12-2016 in Civil Appeal Nos. 12154-12166 of 2016 (arising out of SLP (C) Nos. 14911-14913 of 2013) namely the State of Tamil Nadu represented by its Secretary Home, Prohibition and Excise Department & others versus K. Balu & another. Vide the said Order certain directions are issued viz. for removal of all liquor vendos on National & State Highway across the country, removal of all advertisements and signboards depicting sale of liquor and to forthwith stop granting any new licences along the Highways.

2. Hon'ble Supreme Court has issued directions to all the States and Union Territories which is reproduced as under:-

- (i) All States and Union Territories shall forthwith cease and desist from granting licences for the sale of liquor along national and state highways;
- (ii) The prohibition contained in (i) above shall extend to and include stretches of such highways which fall within the limits of a municipal corporation, city, town or local authority;
- (iii) The existing licences which have already been renewed prior to the date of this order shall continue until the term of the licence expires but no later than 1st April, 2017;
- (iv) All signages and advertisements of the availability of liquor shall be prohibited and existing ones removed forthwith both on national and state highways;
- (v) No shop for the sale of liquor shall be
 - (i) visible from a national or state highway;
 - (ii) directly accessible from a national or state highway and
 - (iii) situated within a distance of 500 metres of the outer edge of the national or state highway or of a service lane along the highway.

3. Now, therefore in order to implement the directives of the Hon'ble Supreme Court of India it is expedient to have a coordinated and united effort of all stakeholder Departments. Hence, it is decided

to constitute a Core Committee comprising of the following Officers, viz.:-

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|--|-----|-----------|
| i. Commissioner of Excise | ... | Chairman. |
| ii. Principal Chief Engineer (PWD) | ... | Member. |
| iii. Collector (North) or his representative | ... | Member. |
| iv. Collector (South) or his representative | ... | Member. |
| v. Superintendent of Police (North) | ... | Member. |
| vi. Superintendent of Police (South) | ... | Member. |
| vii. Director of Municipal Administration. | ... | Member. |
| viii. Director of Panchayats. | ... | Member. |
| ix. Director of Settlement and Land Records. | ... | Member. |

4. The Terms of Reference for the Core Committee shall be as follows:-

- a. Monitor the implementation of the order and submit its forth nightly report on action taken to the Office of Chief Secretary, Government of Goa.
- b. The Core Committee shall meet as frequently as required but not less than once in fifteen days.
- c. The Core Committee shall break up responsibilities between their respective Departments and ensure that adequate directions are issued and manpower is assigned to carry out the work at the taluka level. The Core Committee shall constitute Taluka Level Teams for the purpose of carrying out the exercise of surveying, identification, demarcation of identifiable landmarks at the distance of 500 metres from the outer edge of the national or state highway, etc.
- d. It is required to ensure that the said order of Hon'ble Supreme Court is implemented in totality before 1st April, 2017.

5. The District Collectors and Superintendents of Police shall render all the necessary help and assistance to the Core Committee in implementing the Order as and when requested for by the Chairman of the Committee.

By order and in the name of the Governor of Goa.

Dharmendra Sharma, Chief Secretary.

Porvorim, 18th January, 2017.

Debt Management Division

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Notification

No. 2/8/2010-Fin (DMU)Part/473

Read: Notification No. 2/8/2012-Fin(DMU) dated 08-05-2015.

Government is pleased to accept the resignation tendered by Shri Sidharth Kuncalienker as a Vice Chairman of Goa State Infrastructure Development Corporation Ltd., w.e.f. 11-01-2017.

By order and in the name of the Governor of Goa.

Michael M. D'Souza, Additional Secretary (Finance).

Porvorim, 20th January, 2017.

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Notification

No. 2/8/2010-Fin(DMU)PF.

Read: Notification No. 2/8/2012-Fin(DMU) dated 07-11-2014.

Government of Goa is pleased to accept the resignation tendered by Dr. Pramod Sawant as a Chairman of Goa State Infrastructure Development Corporation Ltd., w.e.f. 16-01-2017 and consequently to appoint Secretary (Finance) to the post of Chairman, GSIDC Ltd., with immediate effect, until further orders.

By order and in the name of the Governor of Goa.

Michael M. D'Souza, Additional Secretary (Finance).

Porvorim, 23rd January, 2017.

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Department of General Administration—
Notification

No. 2/2/2010-GAD-III

In exercise of the powers conferred by the explanation to Section 25 of the Negotiable Instruments Act, 1881 (Act 26 of 1881) delegated by the Government of India, Ministry of Home Affairs, New Delhi vide Notification No. U.11030/2/73-UTL dated 28-06-1973, read with Section 135B of the Representation of the People Act, 1951 (Central Act 43 of 1951), the Government of Goa hereby declares Saturday, the 04th February, 2017

(15 Magha, Saka-1938) as a "Public Holiday" being the "Polling day" for the General Elections to the Goa Legislative Assembly, 2017, throughout the State of Goa.

The aforesaid holiday shall be a "paid holiday", in addition to the holidays indicated in the Notification No. 2/1/2016-GAD-H dated 09-11-2016, published in the Official Gazette, Series II No. 33 dated 17-11-2016 to the establishments as detailed below:

- (i) industrial workers of the State of Goa;
- (ii) daily wage workers of the Government Departments and State Government Industrial Departments;
- (iii) commercial and industrial workers of private establishments in the State of Goa;
- (iv) all private establishments;
- (v) daily wage/casual workers employed in any business, trade, industrial undertakings or any other establishments.

By order and in the name of the Governor of Goa.

Amarsen Wamanrao Rane, Additional Secretary (GA).

Porvorim, 23rd January, 2017.

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Department of Labour—
Notification

No. 28/1/2016-LAB/Part-V/07

The following award passed by the Labour Court-II at Panaji-Goa on 21-10-2016 in reference No. LC-II/IT/24/13 is hereby published as required by Section 17 of the Industrial Disputes Act, 1947 (Central Act 14 of 1947).

By order and in the name of the Governor of Goa.

Georgina Saldanha, Under Secretary (Labour).

Porvorim, 2nd January, 2017.

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IN THE LABOUR COURT-II
GOVERNMENT OF GOA
AT PANAJI

(Before **Shri Suresh N. Narulkar**,
Hon'ble Presiding Officer)

Case No. Ref. LC-II/IT/24/13

Shri Ramnath Chodankar,
since deceased
through his legal heirs

1. Smt. Rashmi Ramnath
Chodankar,
2. Shri Runal Ramnath
Chodankar,
3. Ms. Rushal Ramnath
Chodankar, ... Workman/Party I.

V/s

The Goa Urban Co-operative
Bank Limited,
Panaji-Goa ... Employer/Party II.

Workman/Party I represented by Shri Subhash Naik
George.

Employer/Party II represented by Adv. Shri G. K.
Sardessai.

Panaji, Dated: 21-10-2016

AWARD

1. In exercise of the powers conferred by Clause (d) of sub-section (1) of Section 10 of the Industrial Disputes Act, 1947 (Central Act 14 of 1947), the Government of Goa, by Order dated 04-07-2013, bearing No. 28/28/2013-LAB/456 referred the following dispute for adjudication to the Industrial Tribunal of Goa. The Hon'ble Presiding Officer, Industrial Tribunal cum Labour Court, in turn assigned the present dispute to this Labour Cour-II of Goa for its adjudication, vide her order dated 08-07-2013.

“(1) Whether the action of the Management of the Goa Urban Co-operative Bank Limited, Panaji-Goa, in dismissing from service its workman, Shri Ramnath V. Chodankar, Sub-staff with effect from 20-11-2012, is legal and justified?

(2) If not, what relief the Workman is entitled to?”

2. On receipt of the reference, a case was registered under No. LC-II/IT/24/13 and registered A/D notice was issued to the Parties. In pursuance to the said notice, the Parties put in their appearance. The Workman/Party-I (for short 'Workman') filed his Statement of Claim on 15-10-2013 at Exb.6. The facts of the case, in brief as pleaded by the Workman are that he was employed with the Employer/Party-II (for short "Employer") as a "Sub-staff" and posted at Savordem, Goa, with effect from October, 1979. He stated that thereafter, he worked at Vasco branch,

consequent upon his transfer till the date of his wrongful termination w.e.f. 20-11-2012. He stated that neither, he was issued any memo, nor issued any charge-sheet, alleging any act of misconduct. He stated that all the workmen of the Employer bank are members of a trade union by name Goa Urban Co-op. Bank Employees union. He stated that Mr. Subhash Naik George is the President of the said union. He stated that he was elected as the Assistant Secretary of the said union in the year 2009. He stated that in the year 2011, he was elected as Executive Committee member.

3. He stated that he was issued a letter dated 05-03-2010, directing him to give a written statement, regarding the incident of theft that had occurred in the Vasco branch of the Employer on 19-02-2010. He stated that he replied to the said letter of the Employer dated 05-03-2010, vide his letter dated 18-03-2010. He stated that he was thereafter issued a notice of preliminary enquiry dated 24-04-2010, informing him that a preliminary investigation would be conducted by Mr. Vijay A. Palekar. He stated that he attended the said preliminary enquiry before Adv. Shri Vijay A. Palekar, however, no copy of proceedings were given to him. He stated that thereafter, the Employer issued to him, a charge-sheet dated 26-07-2010 alleging certain acts of misconduct against him. He stated that upon receipt of the said charge-sheet, he requested the Employer bank to supply him documents on which basis, the said charge-sheet was issued to him, in order to enable him to submit reply to the same, by his letter dated 30-07-2010. He stated that the Employer bank, however, did not bother to reply to his letter, nor supplied the documents, but, straight away went ahead with the enquiry proceedings.

4. He stated that Mr. Prasanna C. Chawdikar, an Advocate, was appointed as Enquiry Officer to hold enquiry in respect of the said charge-sheet. He stated that Mr. Gaurish N. Agni, Advocate was appointed as Management Representative. He stated that the Enquiry Officer conducted enquiry in respect of the said charge-sheet issued to him. He stated that Enquiry Officer submitted his findings, by holding him guilty of charges of misconduct levelled against him, vide his findings dated 31-08-2012. He stated that thereafter, the Employer issued him a show-cause notice dated 15-10-2012, enclosing the findings of the Enquiry Officer. He stated that he was asked to show-cause, as to why he should not be dismissed from service. He stated that vide his letter dated 06-11-2012, he replied to the said show-cause notice of the

Employer bank. He stated that he was thereafter issued a letter of dismissal dated 17-11-2012, dismissing him from service with effect from 20-11-2012. He submitted that aggrieved by the decision of the Employer to dismiss him from services w.e.f. 20-11-2012, he raised an industrial dispute, in the matter of alleged illegal termination of his services and demanded for his reinstatement with full back wages and continuity in service before the Appellate Authority of the Employer. He stated that a copy of his representation was marked to the Commissioner, Labour & Employment, Panaji, Goa, for her intervention. He stated that the Labour Commissioner, Panaji-Goa, intervened in the matter, but resulted in failure.

5. He stated that vide his letter dated 12-09-2012, he had submitted his resignation from the service of the Employer bank, at the request of its Managing Director. He stated that the said letter was received by the Employer bank on 12-09-2012 in the evening. He stated that when he went to report for work as usual at Vasco branch of the Employer on 13-09-2012, the Branch Manager did not allow him to report for duty, by stating that he had resigned from the service. He stated that he addressed a letter dated 16-10-2012 to the Employer bank, requesting to clear his legal dues, upon his resignation from the bank. He stated that as the Employer did not pay his legal dues, he addressed a letter dated 18-10-2012 to the Labour Commissioner, Panaji-Goa. He stated that the Employer bank addressed a letter dated 19-10-2012 to him, after over a month stating that his resignation letter is not accepted. He stated that he replied to the said letter of the Employer bank, vide his letter dated 25-10-2012. He stated that he informed the Employer bank that the bank cannot refuse to accept his resignation.

6. The Workman challenged the termination of his services w.e.f. 20-11-2012, by contending to be not only illegal and unjustified, but also malafide, vindictive and as and by way of victimization for his trade union activities. The Workman submitted that the departmental enquiry conducted against him is in gross violation of the principles of natural justice as well as the service rules applicable to the Employer bank. He submitted that the charge-sheet issued to him is vague as there are no allegations leveled against him in the said charge-sheet. He submitted that the contents of para 1 to 5 of the said charge-sheet are statement of facts and not allegations of misconduct. He submitted that in the said charge-sheet issued to him, no allegations of misconduct have been leveled against him, though he has been charged for misconduct namely (e) and (j).

7. He submitted that during the course of enquiry, he had raised certain preliminary objections before the Enquiry Officer pertaining to holding of the enquiry. He submitted that however, the Ld. Enquiry Officer has mechanically and wrongly disallowed his preliminary objections and gave ruling in favour of the Employer bank. He submitted that the Enquiry Officer gave his findings mechanically, without application of mind and without there being any evidence on record to hold him guilty of the charges leveled against him. He submitted that the said findings of the Enquiry Officer are vague and biased in favour of the Employer bank. He submitted that the said findings of the Enquiry Officer are also perverse and without any proper reasoning. He submitted that there is no allegation that he disobeyed any order of the Employer bank, but the Enquiry Officer has held him guilty of willful insubordination or disobedience of any lawful and reasonable order of the management. He submitted that the charges leveled in the charge-sheet has not been proved in the enquiry at all. He submitted that in fact, it has come in the evidence on record that the Oriental Insurance Company has made good amount of Rs. 5,00,000/-, which was robbed from the bank, while cash was in transit from the Employer bank to the I.D.B.I. bank. He submitted that there is nothing in the enquiry proceedings that he has disobeyed any lawful and reasonable order of the management or had indulged in willful insubordination.

8. He submitted that the charges leveled against him in the charge-sheet is a minor misconduct as per service conditions/bipartite settlement applicable to him. He submitted that in terms of clause (j) of the Service Condition namely "neglect of work, negligence in performing duties, the maximum punishment is warning or censure or adverse remark in service record or have his increment stop for a period not longer than six months. He submitted that the punishment of dismissal cannot be imposed on him for negligence as per service condition/bipartite settlement. He submitted that at the time of dismissal, the Employer bank did not pay him gratuity till date. He stated that the Employer did not consider his past record, while dismissing him from services as required under the service condition. He submitted that even assuming for the sake arguments and without admitting that the charges are proved, the punishment of dismissal imposed upon him is highly disproportionate and extremely harsh, considering the facts and circumstances of the case.

He submitted that this Hon'ble Labour Court has powers u/s 11 of the I.D. Act to reassess the evidence and reduce the punishment, taking into consideration the facts and circumstances of the case.

9. He submitted that during his tenure as office bearer and executive committee member of the union, the union had gone on two days strike and indefinite strike action, which was unlike by the Employer bank. He stated that several employees were transferred after the strike action and the Employer bank was looking at opportunity to strike at him at appropriate time. He submitted that since the date of his termination, he is unemployed and have no source of income. He stated that his wife earns a little amount by making cotton bags and his brother also supports him to make both end meets. He therefore prayed that he be reinstated in service with full back wages and continuity in service with cost and interest.

10. The Employer resisted the claim of the Workman by filing its written statement on 04-12-2013 at Exb.9. The Employer, as and by way of preliminary objection, submitted that the reference is bad-in-law and hence not maintainable and that the present dispute of the Workman is not an 'industrial dispute' as defined under the I.D. Act, 1947. The Employer further submitted that there is non-application of mind by the Appropriate Government while referring the present dispute.

11. The Employer admitted that the Workman was employed with them as a sub-staff at its Vasco branch. The Employer stated that on 19-02-2010, the Workman was instructed by Mrs. Amita Bhangu (Jr. Officer) to accompany Mrs. Archana Kare (clerk) to the I.D.B.I. bank for depositing a cash of Rs. 5,00,000/-. The Employer stated that on having received her instructions, the Workman went to the payment cashier along with Mrs. Archana Kare, clerk and collected cash of Rs. 5,00,000/- from Mrs. Archana Kare which was given to her by the cashier Mrs. Milinda Dessai. The Employer stated that the Workman also signed the register maintained by Mrs. Milinda Dessai. The Employer stated that the cash was placed in the dicky of the scooter of the bank by the Workman. The Employer stated that thereafter both of them proceeded to the I.D.B.I. bank on the scooter for the purpose of depositing the said amount. The Employer stated that the scooter was driven by the Workman. The Employer stated that after reaching the I.D.B.I. bank, the cash was found missing from the dicky of the scooter. The Employer stated that the cash has not been traced

till date. The Employer stated that therefore, it has decided to conduct enquiry against the Workman for the act of misconduct committed by him and as spelt out in the service condition applicable to him, namely, willful insubordination or disobedience of any lawful and reasonable order of the management or of a superior and doing any act prejudicial to the interest of the bank or gross negligence or negligence involving or likely to involve the bank in serious loss.

12. The Employer stated that accordingly, it has issued charge-sheet cum notice of enquiry dated 26-07-2010 to the Workman. The Employer stated that the Workman did not submit his reply to the charge-sheet cum notice of enquiry. The Employer stated that Mr. P. Chawdikar was appointed as an Enquiry Officer. The Employer stated that Mr. Gaurish Agni was representing the management and the Workman was represented by Shri. Subhash Naik George, the President of Goa Urban Co-op. Bank Employees Union. The Employer stated that the Enquiry Officer submitted his findings, after appreciating the evidence on record and held that the Workman is guilty of the charges of misconduct levelled against him. The Employer stated that vide its letter dated 19-10-2012, it has replied to the resignation letter submitted by the Workman. The Employer stated that it has considered the proceedings of the enquiry, the findings of the Enquiry Officer and concurred with the same. The Employer submitted that considering the gravity of proved misconduct, it has decided to discharge the Workman from the services. The Employer stated that the Workman was accordingly served with a show-cause notice dated 15-10-2012, as to why he should not be dismissed from service. The Employer stated that the Workman filed his reply to the aforesaid show-cause notice issued to him. The Employer stated that after carefully perusing the contents of the said reply to the show-cause notice and once again going through the proceedings of the enquiry and the findings of the Enquiry Officer, they did not find the explanation of the Workman satisfactory and hence it has decided to dismiss the Workman from the service.

13. The Employer submitted that the Workman was involved in the incident and had the responsibility to deposit the amount given in his physical possession. The Employer stated that the said amount was stolen from him due to his

negligence. The Employer stated that the Workman was asked by the Branch Manager, Vasco, by its letter dated 05-03-2010 to give a written statement about the incident. The Employer stated that from his conduct in handling cash, it can be inferred that the Workman was negligent, while discharging the work of cash deposit, which was entrusted to him. The Employer admitted that as it was a preliminary investigation in the matter and fully confidential in nature, wherein the statement of all concerned staff related to the incident were taken and there was no need to provide copy of proceedings to all the concerned including the Workman. The Employer submitted that the preliminary enquiry is not a part of the departmental enquiry and hence it has not affected the outcome of the said enquiry. The Employer stated that in the charge-sheet itself, the Workman was informed that he may produce such documents, he may deemed necessary to produce and that he was also permitted to be defended by a co-employee of his choice and was also informed that he shall be given all the opportunities put forward his views/defenses. The Employer submitted that bank has offered all the opportunities to the Workman to defend himself in the enquiry and as such the Workman had an opportunity to give place all his defenses in the enquiry before the Enquiry Officer. The Employer submitted that all the documents, on which basis the charge-sheet was issued, were given to the Workman during the course of enquiry. The Employer stated that the representative of the Workman have acknowledged for having received the same. The Employer submitted that the charge-sheet clearly states that there is a loss of Rs. 5,00,000/- given in physical possession of Workman and the said cash is lost due to his negligence and not obeying the instructions to carry the cash as per the rules of the bank.

14. The Employer stated that there is a bankers indemnity insurance policy with the Oriental Insurance Company Ltd. The Employer stated that the sum insured under this policy is Rs. 3,00,00,000/-, in which basic sum insured is Rs. 7,50,000/- sum insured on premium is Rs. 1,92,50,000/- and sum insured in transit is Rs. 1,00,00,000/-. The Employer stated that this policy gives indemnity against the losses to the bank. The Employer stated that it has insured under this since the year 1990 and continuous till date. The Employer stated that the insurance company gives discount in the yearly premium, if there is no claim to the insurance. The Employer stated that there is provision in the policy that the insured shall bear the first 25% of each

item or 2% of the basic sum insured, whichever is higher. The Employer therefore submitted that the bank has not received a total amount of Rs. 5,00,000/- as stated by the Workman. The Employer stated that since that year, the bank has lost on its discount in the form of no claim bonus. The Employer stated that the bank has received Rs. 4,63,700/- only thereby short fall of Rs. 36,300/-. The Employer stated that the bank has lost on no claims discounts on its yearly premium, due to this claim to the insurance company since 2011 till date, which amounting to Rs. 8,26,904/-. The Employer stated that the said amount of no claim discount has been forfeited forever and every year. The Employer stated that it has to suffer this loss due to the claim of Rs. 5,00,000/-. The Employer stated that the Workman was given all the documents in the enquiry. The Employer stated that on completion of enquiry, wherein the Workman had participated in enquiry till the end, anticipating the action that may be taken against him, tendered his resignation on health grounds and remained absent from duties thereafter. The Employer stated that vide its letter dated 19-10-2012, it has informed the Workman that as the disciplinary proceedings were initiated against him, his resignation was not accepted. The Employer stated that it has also informed the Workman that its Branch Manager had informed its head office that he has not reported for work from 13-09-2010. The Employer stated that further the Workman was cautioned that his failure to report for work would be treated as additional misconduct. The Employer stated that the Workman has unauthorizedly remained absent from duties from 13-09-2012. The Employer stated that the Workman has received his salary for the full month of September, October and in November upto the date of his dismissal, which he has duly withdrawn from his account through ATM.

15. The Employer stated that it is a co-operative bank, managed by the board of directors and the board meets once in a month. The Employer stated that the matter related to the staff are decided by the board, as such, there was a time period to decide and convey its decision to the Workman. The Employer admitted that the gratuity is not paid to the Workman. The Employer submitted that as per Sec. 4 (6) (a) of the Payment of Gratuity Act, 1972, the gratuity of an employee, whose services have been terminated for any act, willful omission or negligence causing any damage or loss to, or destruction of property belonging to the Employer shall be forfeited to the extent of damage or loss so caused and accordingly the

gratuity has been fully forfeited and not paid to the Workman. The Employer stated that the Workman was issued a charge-sheet and enquiry was initiated, which was drawn on the submission of written apology by him in the year 1998. The Employer submitted that the Enquiry Officer on the basis of evidence on record submitted a reasoned findings, holding the Workman guilty of the charges leveled against him. The Employer stated that it has considered the findings of the Enquiry Officer, concurred with the same and considering the gravity of proved misconducts, decided to dismiss him from service. The Employer submitted that they have conducted the enquiry in a fair and proper manner and in the event, this Hon'ble Court set aside the same on any of the ground, they may be permitted to lead evidence before this Hon'ble Court to prove the charges of misconduct leveled against the Workman. The Employer denied the overall case as pleaded by the Workman and prayed for dismissal of the present reference with cost.

16. Thereafter, the Workman filed his Rejoinder on 11-12-2013 at Exb.10. The Workman by way of his Re-joinder, confirms and reiterates all the submissions and averments made by him in his claim statement to be true and correct and denies all the statements and averments made by the Employer in the Written Statement, which are contrary to the statements and averments made by him. The Workman submitted that the Employer did not take into account his clean past record, before imposing the punishment, which was mandatory.

17. Based on the pleadings filed by the parties herein above respectively, this court framed the following issues on 04-12-2013 at Exb. 9.

1. Whether a fair, proper & impartial enquiry was conducted against the Workman/Party I in accordance with the principles of natural justice?
2. Whether the charges of the misconduct leveled against Workman/Party I vide charge-sheet dated 26-07-2010 has been proved to the satisfaction of this court by acceptable evidence?
3. Whether the Workman/Party I proves that the action of the Employer/Party II in dismissing her services w.e.f. 20-11-2012 is illegal and unjustified?
4. Whether the Employer/Party II proves that the present Order of Reference issued by Government of Goa is bad-in-law in view of

the allegations made in paras a, b and c of its Written Statement?

5. Whether the Workman/Party I is entitled to any relief?

6. What Order? What Award?

18. My answers to the aforesaid issues are as under:

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|----------------------|---|
| (a) Issue No. 1: | In the affirmative. |
| (b) Issue No. 2: | Partly in the affirmative and partly in the negative. |
| (c) Issue No. 3: | In the negative. |
| (d) Issue No. 4: | In the negative. |
| (e) Issue No. 5 & 6: | As per final order. |

REASONS:

19. Issue Nos. 1 and 2:

Vide order dated 28-10-2015, passed in my findings on the preliminary issue No. 1 and 2, I have come to the conclusion and held that a free, fair and proper enquiry has been conducted against the Workman, in respect of the charge-sheet dated 26-07-2010 and that the Employer could prove only one charge of misconduct at Sr. No. (j) doing any act prejudicial to the interest of the bank or gross negligence or negligence or likely to involve the bank in serious loss as spelt out in the said charge-sheet dated 26-07-2010, to the satisfaction of this court by acceptable evidence and the another charge at sr. no. (e) willful insubordination or disobedience of any lawful or reasonable order of the management or of a superior, has not been proved. The issue no.1 is therefore answered in the affirmative and issue No. 2 is answered partly in the affirmative and partly in the negative.

20. Issue No. 4:

I am deciding the issue No. 4 first, prior to the issue no.3 as the said issue No. 3 goes to the very root jurisdiction of this court.

The Employer, in its written statement filed in the present proceedings, as and by way of preliminary objections, submitted that the present reference filed by the Workman is bad-in-law and hence not maintainable and that the present dispute of the Workman is not an 'industrial dispute' as defined under the Industrial Disputes Act, 1947. The Employer further submitted that there is non-application of mind by the Appropriate Government while referring the present dispute. I have heard the oral arguments of the Ld. Rep. Shri Subhash Naik George, appearing for the Workman as well as Ld. Adv. Shri G. K. Sardesai, appearing for the Employer Bank. I have also

carefully considered the oral submissions made by the Ld. Representatives appearing for the respective parties. I have also carefully perused the records of the present case.

21. The Employer, in its written statement filed in the present proceeding, as and by way of preliminary objections, contended that the present reference filed by the Workman is bad-in-law and hence not maintainable, that the present dispute of the Workman is not an industrial dispute as defined under the Industrial Disputes Act, 1947 and that there is non-application of mind by the Appropriate Government while referring the present dispute. The said pleadings of the Employer are vague in nature, as it does not disclose any justification in support of its pleadings. The Employer has also failed to produce on record any material evidence, either oral or documentary, in support of its aforesaid allegations.

22. Even otherwise, in the case in hand, it is not in dispute that the Party I is a 'workman' within the meaning of section 2(s) of the I.D. Act, 1947. It is also not in dispute that the Party II Bank is an 'Employer' within the meaning of section 2(j) of the I.D. Act, 1947. Hence, the present dispute raised by the Workman against the Employer Bank pertaining to her non-employment is an 'industrial dispute' within the meaning of section 2(k) of the I.D. Act, 1947 and as such, this court has every jurisdiction to adjudicate the present reference. Consequently, the Employer failed to prove its allegations that the reference is bad-in-law for any reasons, that the present dispute raised by the Workman is not an 'industrial disputes as defined under the Industrial Disputes Act, 1947 and that there is non-application of mind by the Appropriate Government while referring the present dispute. The issue No. 4 is therefore answered in the negative.

23. Issue No. 3:

I have heard the oral arguments of Ld. Rep. Shri Subhash Naik George, appearing for the Workman as well as Ld. Adv. Shri G. K. Sardessai, appearing for the Employer.

24. Ld. Rep. Shri Subhash Naik George, representing the Workman, during the course of his oral arguments, submitted that the Workman was issued a charge-sheet dated 26-07-2010, by alleging charges of misconduct, namely (j) doing any act prejudicial to the interest of the bank or gross negligence or negligence or likely to involve the bank in serious loss and (e) willful insubordination or disobedience of any lawful or

reasonable order of the management or of a superior. He submitted that by order dated 28-10-2015, passed on the findings on the preliminary issue No. 1 and 2, this Hon'ble Court has held that a free, fair and proper enquiry has been conducted against the Workman, in respect of the charge-sheet dated 26-07-2010 and that the Employer could prove only one charge of misconduct at sr. no.(j) doing any act prejudicial to the interest of the bank or gross negligence or negligence or likely to involve the bank in serious loss as spelt out in the said charge-sheet dated 26-07-2010, to the satisfaction of this court by acceptable evidence and the another charge at sr. no. (e) willful insubordination or disobedience of any lawful or reasonable order of the management or of a superior, has not been proved. He submitted that the Workman was in the employment of the Employer Bank continuously from 01-09-1976 till the date of her wrongful dismissal w.e.f. 20-11-2012. He submitted that except the aforesaid misconduct, the Workman was never issued any memo or charge-sheet alleging any act of misconduct in his long service with the Employer Bank. He submitted that the Workman was elected as the Asstt. Secretary of the trade union namely Goa Urban Co-op. Bank Employees union in the year 2009 and again in the year 2011, which was affiliated to All Goa Co-op. Bank Employees Federation. He submitted that the said union has signed bipartite settlement with the Employer Bank from time to time revising wages and service conditions of its members. He submitted that clause XII (1) of the said bipartite settlement on record at Exb. 32, specifies the misconduct on the part of the employees. He submitted that Clause XII (2) of the said bipartite settlement classifies the misconduct as minor misconducts and major misconducts. He submitted that sub clause (a) to (q) of the said clause XII (2) of the said bipartite settlement have been termed as major misconducts. He therefore submitted that the misconduct of negligence proved against the Workman is a minor misconduct. He submitted that the Employer Bank has recovered an amount of Rs. 4,63,700/- out of the alleged theft of the amount of Rs. 5,00,000/- from the Oriental Insurance Co. Ltd., after adjusting the deductions under the Banker's Blanket Policy No.163700/48/2010/167 and thus the Employer Bank has hardly suffered a loss to the extent of Rs. 36,300/-. He therefore submitted that taking into consideration, the past clean, unblemished record of the Workman in her long service and also taking into consideration, the proved minor misconduct of negligence, the punishment of dismissal imposed

on the Workman is extremely harsh and disproportionate to the facts and circumstances of the case. He submitted that Section 11 of the I.D. Act, 1947 empowers the Labour Court to re-assess the evidence and reduce the punishment taking into consideration the facts and circumstances of the case. In support of his oral submissions, he relied upon a judgment of Hon'ble Supreme Court of India, in the case of *Kailash Nath Gupta v/s. Enquiry Officer (R.K. Rai), Allahabad Bank and Ors.*, reported in 2003 II CLR 72.

25. On the contrary, Ld. Adv. Shri G. K. Sardesai, representing the Employer Bank, during the course of his oral arguments submitted that the Workman was issued a charge-sheet dated 26-07-2010, alleging an act of misconduct of (j) doing any act prejudicial to the interest of the bank or gross negligence or negligence or likely to involve the bank in serious loss and (e) willful insubordination or disobedience of any lawful or reasonable order of the management or of a superior. He submitted that by order dated 28-10-2015, passed on the findings on the preliminary issue No. 1 and 2, this Hon'ble Court has held that a free, fair and proper enquiry has been conducted against the Workman in respect of the charge-sheet dated 26-07-2010 and that the Employer could prove only one charge of misconduct at Sr. No. (j) doing any act prejudicial to the interest of the bank or gross negligence or negligence or likely to involve the bank in serious loss as spelt out in the said charge-sheet dated 26-07-2010, to the satisfaction of this court, by acceptable evidence and the another charge at Sr. No. (e) willful insubordination or disobedience of any lawful or reasonable order of the management or of a superior, has not been proved. He submitted that due to the said act of negligence on the part of the Workman, the Employer Bank has not only suffered huge monetary loss, but also, lost the faith created by its several customers, by depositing their amount in the custody of the Employer Bank. He therefore submitted that the misconduct levelled and proved against the Workman is a major misconduct. He submitted that as a result of commission of the said misconduct, the Employer lost confidence reposed in the Workman. He submitted that thus taking into consideration the facts and circumstances of the entire case as well as the seriousness of the proved misconduct levelled against the Workman, the punishment of dismissal imposed upon her is just, fair and proper and proportionate to the proved misconduct. In support of his oral submissions, he relied upon two judgment of Hon'ble Supreme Court of India one in the case of **Bharat Heavy**

Electricals Ltd. v/s. M. Chandrashekhhar Reddy and Ors., reported in (2005) 2 SCC 481 and another in the case of **Homba Gowda Educational Trust and Anr., v/s. State of Karnataka and Ors.**, reported in (2006) 1 SCC 430.

I have carefully perused the entire records of the present case. I have considered the oral submissions advanced by the Ld. Rep. Shri Subhash Naik George, appearing for the Workman as well as Ld. Adv. Shri G. K. Sardesai, appearing for the Employer Bank and is of the considered opinion as under.

26. It appears from the pleadings of the Workman, filed in the present proceedings that he has challenged his order of dismissal, mainly on the ground that the enquiry held against him, is not fair and proper and that the charges of misconduct leveled against him, vide charge sheet dated 26-07-2010, have not been proved to the satisfaction of this Court, by acceptable evidence. The Workman contended that the punishment of dismissal imposed on him is malafide, vindictive and as and by way of victimization for his trade union activities. The Workman finally contended that without prejudice and without admitting that the charges of misconduct are proved against him, the punishment of dismissal meted out to him is highly disproportionate and extremely harsh as per the bipartite settlement, negligence is a minor misconduct.

27. In the case of **Mahindra and Mahindra Ltd. v/s. N.B. Narawade** reported in 2005 (I) CLR 803, the Hon'ble Supreme Court has held that *"It is no doubt true that after introduction of Section 11-A in the I.D. Act, 1947, certain amount of discretion is vested with the Labour Court/Industrial Tribunal in interfering with the quantum of punishment awarded by the management where the workman concerned is found guilty of misconduct. The said area of discretion has been very well defined by the various judgments of this court referred to herein above and it is certainly not unlimited as has been observed by the Division Bench of the High Court. The discretion, which can be exercised under Sec. 11-A is available only on the existence of certain factors like punishment being disproportionate to the gravity of misconduct so as to disturb the conscience of the court, or the existence of any mitigating circumstances which require the reduction of the sentence or past conduct of the workman which may persuade the Labour Court to reduce the punishment. In the absence of any such factor existing, the Labour Court cannot by way of sympathy alone exercise the power u/s. 11-A of the Act and reduce the punishment"*.

28. In the case of **Chairman & Managing Director, United Commercial Bank and Other V/s P. C. Kakkar.**, reported in **2003-LLR 436**, the Hon'ble Supreme Court of India has held that *"the court should not interfere with the administrator's decision unless it was illogical or suffers from procedural impropriety or was shocking to the conscience of the Court, in the sense that it was in defiance of logic or moral standards. Only where the Court finds that a punishment is shockingly disproportionate it must record reasons for coming to such conclusion and mere expression that the punishment is shockingly disproportionate could not meet the requirement of law. Further the charges against Respondent not being casual in nature, but being serious, the High Court was not justified in interfering with the quantum of punishment"*.

29. The Principle laid down by the Hon'ble Supreme Court of India, in its aforesaid respective judgments is well established and there is no dispute about the same. Thus, it is settled law that the discretion of the court to alter or reduce the punishment as empowered u/s. 11-A of the I.D. Act, 1947 is not absolute. The discretion, which can be exercised u/s 11-A is available only on the existence of certain factors, like punishment being disproportionate to the gravity of misconduct, so as to disturb the conscience of the Court, or the existence of any mitigating circumstances, which requires the reduction of the sentence or the past conduct of the Workman, which may persuade the Labour Court to reduce the punishment.

30. Vide order dated 28-10-2015, passed in my findings on the preliminary issue No.1 and 2, I have come to the conclusion and held that a free, fair and proper enquiry has been conducted against the Workman in respect of the charge-sheet dated 26-07-2010 and that the Employer could prove only one charge of misconduct at Sr. No. (j) doing any act prejudicial to the interest of the bank or gross negligence or negligence or likely to involve the bank in serious loss as spelt out in the said charge-sheet dated 26-07-2010, to the satisfaction of this court by acceptable evidence and the another charge at Sr. No. (e) willful insubordination or disobedience of any lawful or reasonable order of the management or of a superior, has not been proved.

31. Hence, the contentions of the Workman that no fair and proper inquiry has been conducted against her, is without any merits. As regards the charges leveled against her, vide charge-sheet dated 26-07-2010, have not been proved at all, it is partly correct to the extent of charge at Sr. No. (e) willful insubordination or disobedience of any lawful or reasonable order of the management or of a superior.

Thus, the questions remains to be decided is that the punishment of dismissal from service imposed upon the Workman is malafide, vindictive, as and by way of victimization for his trade union activities and/or disproportionate to the proved misconduct.

32. The evidence on record indicates that the service conditions of the Workman as well as other employees of the Employer Bank are governed by the said bipartite settlement signed between the Employer with its employees union, which is on record at Exb. 32. Clause XII (1) of the said bipartite settlement (Exb. 32) specifies certain acts or omissions among others as misconduct on the part of the employee in addition to what has been defined in Staff Accountability Policy of the Employer Bank, which are numbered as (a) to (hh). Clause XII (2) of the said bipartite settlement categorized the said misconducts as stated in Clause XII (1) as major misconducts and minor misconducts. As per the clause XII (2) of the said bipartite settlement, sub-clause (a) to (q) of Clause XII (1) have been termed as major misconducts and sub-clause (r) to (hh) of Clause XII (1) have been termed as minor misconducts. Similarly Clause XV of the said bipartite settlement specifies various punishments. Sub-Clause (1) of Clause XV of the bipartite settlement laid down punishments to an employee, who found guilty of gross misconducts such as (a) be dismissed without notice, or (b) be warned or censured, or have an adverse remark entered against him, or (c) be fined, or (d) have his increment stopped, or (e) have his misconduct condoned and be merely discharged, or (f) be suspended without wages for not exceeding 15 days. Similarly, Clause (2) of Clause XV of the bipartite settlement laid down punishments to an employee, who found guilty of minor misconducts may (a) be warned or censured, or (b) have an adverse remark entered against him, or (c) have his increment stopped for a period not longer than six months.

33. The Employer Bank also framed its Staff Accountability Policy in pursuance to the directions of Reserve Bank of India. The said Staff Accountability Policy of the Employer Bank laid down certain guidelines pertaining to the working of its Employer and which forms the service conditions of the employees of the Employer Bank in addition to its bipartite settlement. It defines the term 'Accountability' and it means being responsible for one's own actions/inactions. It further defines the staff accountability as 'ownership for action taken or not taken, when the

situation called for such action'. The said Staff Accountability Policy has been classified as System Accountability and Human Accountability. Further, the term human accountability has been attributed to any of the following (a) bonafide mistake, (b) gross indifference/negligence and (c) malafide intensions. As per the said policy, any action/absence of action resulting in revenue loss/leakage, but without malafide intensions has been specified as gross indifference/negligence.

34. In the case in hand, undisputedly, the Workman was working with the Employer Bank as a 'Sub-staff' continuously w.e.f. October, 1979 till the date of dismissal of his services w.e.f. 20-11-2012. It is not in dispute that the Workman was a member of the Goa Urban Co-op. Bank Employees Union, which was affiliated to All Goa Co-op. Bank Employees Federation. It is further not in dispute that the Workman was elected as Asstt. Secretary in the year 2009 and again, in the year 2011, he was elected as executive member of the said union.

35. The evidence on record indicates that in the past, the Workman was issued a charge-sheet dated 28-11-1998 for his act of remaining absent unauthorizedly and directing the depositors and customers of the Employer bank to other financial institutions for personal financial gain. He was let off with warning for his aforesaid misconduct, after his apology and assurance to the Employer, of his good behaviour and not to repeat such act in future.

36. The misconduct charged, vide charge-sheet dated 26-07-2010 and proved against the Workman is "(j) doing any act prejudicial to the interest of the bank or gross negligence or negligence or likely to involve the bank in serious loss". The said act of misconduct on the part of the Workman has been termed as major misconduct in terms of clause 12 of the bipartite settlement at Exb. 32. The said misconduct is altogether different than the misconduct specified at sub-clause (t) of clause XII misconduct i.e. "neglect of work, negligence in performing duties". The former is major, while the latter is a minor misconduct.

37. The allegations levelled in the charge-sheet issued to the Workman are that he was instructed to accompany Mrs. Archana Kare, Clerk to deposit cash of Rs. 5,00,000/- in I.D.B.I. bank, Vasco, that the Workman collected cash of Rs. 5,00,000/- from Mrs. Archana Kare, that the Workman also signed the register maintained by Mrs. Melinda Dessai, that the Workman placed the cash in the dickey of the scooter of the bank and that thereafter, both

proceeded to IDBI bank on the scooter of the bank for the purpose of depositing the said amount, that the Workman was driving the said scooter and that after reaching the IDBI bank, the cash was found missing from the dickey of the scooter driven by the Workman. The explanation tendered by the Workman vide his letter dated 18-03-2010 (Exb.17) indicates that the Workman had admitted the aforesaid allegations leveled against him. The Workman further stated that he tied the said cash with sutli and thereafter wrapped in a newspaper and kept the wrapped bundle in a dickey of the scooter of the bank. He stated that he locked the said dickey of the scooter, which was parked in front of the bank. He stated that as Mrs. Archana Kare, the clerk of the bank took time to come out, he went inside to call her back and that after she came, they went to deposit the said cash. The aforesaid explanation submitted by the Workman does not appear to be satisfactory. The entire episode clearly shows the malafide intension of the Workman. The Employer therefore lost confidence reposed in the Workman on account of his aforesaid act/omission.

38. The evidence on record indicates that the Employer bank lodged an FIR in Vasco Police Station in respect of the said missing amount of Rs. 5,00,000/- against an unknown person. The aforesaid act/omission on the part of the Workman is a gross indifference/negligence within the meaning of Staff Accountability Policy of the Employer.

39. The evidence on record indicates that the Employer Bank has recovered an amount of Rs. 4,63,700/- out of the alleged theft of the amount of Rs. 5,00,000/- from the oriental Insurance Co. Ltd. after adjusting the deductions under the Banker's Blanket Policy No. 163700/48/2010/167. Thus, the Employer Bank suffered instant loss to the extent of Rs. 36,300/-. Further, it is implied that as a consequence of aforesaid claim made by the Employer Bank to the Oriental Insurance Co. Ltd., it has lost no claim discount on its yearly premium, which the Employer Bank would have otherwise entitled from the insurance company. Thus, the Employer suffered a huge loss every year on its yearly payment of the premium.

40. Thus, taking into consideration the past record of the Workman, the allegations levelled against him in the charge-sheet, gravity of proved misconduct and the explanation submitted by the Workman to the show-cause notices issued to him, the punishment of dismissal imposed on the Workman is just, fair, proper and proportionate to

the proved misconduct. The said punishment of dismissal does not suffer from malafide, vindictiveness and also victimization for his trade union activities. Hence, the said punishment of dismissal imposed on the Workman is hereby upheld.

41. In the case of **Kailash Nath Gupta (supra)**, the Hon'ble Supreme Court of India has held that "in para 11 & 12 of its judgment observed as under:-

"11.....in the background or what has been stated above, one thing is clear that the power of interference with the quantum of punishment is extremely limited. But when relevant factors are not taken note of, which have some bearing on the quantum of punishment, certainly the court can direct re-reconsideration or in an appropriate case to shorten litigation, indicate the punishment to be awarded. It is stated that there was no occasion in the long past service indicating either irregularity or misconduct of the appellant except the charges which were the subject matter of his removal from service. The stand of the appellant as indicated above is that though small advances may have become irrecoverable, there is nothing to indicate that the appellant had misappropriated any money or had committed any act of fraud. If any loss has been caused to the bank (which he quantifies at about Rs.46,000/-) that can be recovered from the appellant. As the reading of the various articles of charges go to show, at the most there is some procedural irregularity which cannot be termed to be negligence to warrant the extreme punishment of dismissal from service.

12. These aspects do not appear to have been considered by the High Court in the proper perspective. In the fitness of things, therefore, the High Court should examine these aspects afresh. The consideration shall be limited only to the quantum of punishment and not to any other question. As the appellant would have superannuated in the normal course in the year 1994, and the matter is pending for a long time, the High Court is requested to dispose of the matter within six months from the date of receipt of this order. It is made clear that no opinion has been expressed by us as to what would be the appropriate punishment. In this view the impugned order is set aside".

The facts of the aforesaid case before the Hon'ble Apex Court are totally different than the case in hand and as such the principle laid down by the Hon'ble Apex Court is not applicable to the case in hand.

42. In the case of **Hombe Gowda Education Trust and Anr. (Supra)** before the Hon'ble Apex Court, the Respondent No. 3, a teacher, was charge-sheeted for commission of a serious offence. He was found guilty by the Tribunal of having assaulted the Principal of the institution. Both the Tribunal as also the High Court have arrived at a concurrent finding of fact that despite grave provocation on the part of the Principal, Respondent No.3 cannot be absolved of the charges levelled against him. It may be true that no departmental disciplinary proceeding was initiated against the Principal of the institution, but the same by itself would not be a relevant fact for imposing a minor punishment upon the respondent. It may further be true that Respondent 3 committed the offence under a grave provocation, but the Tribunal as also the High Court categorically held that the charges against him were established. The Hon'ble Apex Court, further held that *"Assaulting a superior at a workplace amounts to an act of gross indiscipline. The respondent is a teacher. Even under grave provocation, a teacher is not expected to abuse the head of the institution in a filthy language and assault him with a chappal. Punishment of dismissal from services, therefore cannot be said to be wholly disproportionate, so as to shock one's conscience".*

The facts of the aforesaid case before the Hon'ble Apex Court are totally different than the case in hand and as such the principle laid down by the Hon'ble Apex Court is not applicable to the case in hand.

43. In the case of **Bharat Heavy Electricals Ltd. (supra)**, before the Hon'ble Apex Court, the Respondent terminated the services of the Appellant, the Assistant Grade I by holding disciplinary enquiry on account of his misconduct that he had stealthily taken away the title documents of the properties deposited with the Employer as a security towards equitable mortgage created in favour of the Appellant. The Labour Court held that the punishment of dismissal from service is harsh in the circumstances. The Single Bench as well as Division Bench of Hon'ble High Court dismissed the writ petitions as well as writ appeal filed by the parties. The Respondent therefore filed the appeal before the Hon'ble Apex Court. The Hon'ble Supreme Court, while allowing the appeal filed by the Appellant in para 26 of its judgment observed as under:

"26. That apart, the reasons given by the Labour Court to reduce penalty are reasons which are not sufficient for the purpose of reducing the sentence by using its discretionary power. The fact that the

misconduct now alleged is the first misconduct again is no ground to condone the misconduct. On the facts of this case as recorded by the Labour court the loss of confidence is imminent and no finding has been given by the courts below, including the Labour court, that either the fact of loss of confidence or the quantum of punishment is so harsh as to be vindictive or shockingly disproportionate. Without such finding based on records, interference with the award of punishment in a domestic inquiry is impermissible."

The facts of the aforesaid case before the Hon'ble Apex Court are totally different than the case in hand and as such the principle laid down by the Hon'ble Apex Court is not applicable to the case in hand.

It is therefore, held that the Workman failed to prove that the action of the Employer in dismissing him from service w.e.f. 20-11-2012 is illegal and unjustified. The issue No. 3 is therefore answered in the negative.

44. Issue No. 5:

While deciding the issue No. 3 hereinabove, I have come to the conclusion and held that the action of the Employer in dismissing the Workman from its servicewith effect from 20-11-2012, is just, fair, proper and proportionate to the proved misconduct.

The Workman is therefore not entitled to any relief. The issue no.5 is therefore answered in the negative.

In view of above, I proceed to pass the following order:

ORDER

1. It is held that the action of the Management of the Goa Urban Co-op. Bank Ltd., Panaji-Goa, in dismissing from service its Workman Shri.Ramnath Chodankar, Sub-Staff, with effect from 20-11-2012, is legal and justified.
2. The Workman Shri Ramnath Chodankar, Sub-Staff, is therefore not entitled to any relief.
3. No Order as to Cost.

Inform the Government accordingly.

Sd/-
(Suresh N. Narulkar)
Presiding Officer,
Labour Court-II

Notification

No. 28/1/2016-Lab/Part-V/13

The following award passed by the Labour Court-II, at Panaji-Goa on 03-11-2016 in reference No. LC-II/IT/14/10 is hereby published as required by Section 17 of the Industrial Disputes Act, 1947 (Central Act 14 of 1947).

By order and in the name of the Governor of Goa.

Georgina Saldanha, Under Secretary (Labour).

Porvorim, 2nd January, 2017.

IN THE LABOUR COURT-II

GOVERNMENT OF GOA

AT PANAJI

(Before Shri Suresh N. Narulkar, Hon'ble Presiding Officer)

Case No. Ref. LC-II/IT/14/10

Shri Sandeep Desai,
Rep. by the President,
Goa Trade and Commercial Workers Union,
Velho's Bldg., 2nd floor
Panaji-Goa Workman/Party I
V/s

M/s. New Vision Imaging Pvt. Ltd.,
Thivim Industrial Estate,
Mapusa, Bardez-Goa Employer/Party II
Workman/Party I represented by Adv. Shri Suhas Naik.

Employer/Party II represented by Adv. Shri P. J. Kamat.

Panaji, dated: 03-11-2016.

AWARD

1. In exercise of the powers conferred by Clause (d) of sub-section (1) of Section 10 of the Industrial Disputes Act, 1947 (Central Act 14 of 1947), the Government of Goa, by Order dated 23-08-2010, bearing No. 28/31/2010-LAB referred the following dispute for adjudication to the Industrial Tribunal of Goa. The Hon'ble Presiding Officer, Industrial Tribunal-cum-Labour Court in turn assigned the present reference for adjudication to this Labour Court-II vide his order dated 25-8-2010.

"1. Whether the action of the Management of M/s. New Vision Imaging Pvt. Ltd., Thivim Industrial Estate, Mapusa, Bardez-Goa, in transferring its workman Shri Sandeep Desai from Goa to Balasore-Orissa with effect from May, 2008 is legal and justified?

2. If not, what relief, the workman is entitled to ?”

2. On receipt of the reference, a case was registered under No. LC-II/IT/14/2010 and registered A/D notice was issued to the Parties. In pursuance to the said notice, the Parties put in their appearance. The Workman/Party-I (for short 'Workman'), filed his Statement of Claim on 02-11-2010 at Exhibit 5. The facts of the case, in brief, as pleaded by the Workman are that he was employed with the Employer/Party-II (for short "Employer") at Thivim Industrial Estate, Thivim, Mapusa, Goa. He stated that he alongwith many permanent workmen working with the Employer were bereft of the beneficial Labour Legislation. He stated that they were made to work in most oppressed and exploitative service conditions, without any statutory benefits. He stated that they were not paid the statutory dues such as overtime wages, non-granting of leave, holidays, weekly off etc. to which they were entitled. He stated that the salaries paid to these workmen were meagre and pathetic. He stated that due to the above oppressive and exploitative working conditions, the workmen started demanding the Welfare Labour Legislations. He stated that when he started demanding Welfare Labour Legislations, he was threatened to resign from the services of the Employer.

3. He stated that he was issued a transfer order dated 17-04-2008 as and by way of punishment for not resigning from the services of the Employer Company as per the dictates of the Employer Company. He submitted that the transfer order issued to him, does not states that as to where he should report at Balasore. He stated that nothing was mentioned about his accommodation, stay, food and travelling allowance. He submitted that at the time of his transfer, he was not having any amount to travel to Balasore as instructed to him. He stated that for this reason, he was not in a position to hire any accommodation with the said salary at Balasore and also to procure train tickets to travel at the transferred place. He stated that the Employer Company did not mention anything about his to and fro travel in the transfer order. He submitted that no circumstances of whatsoever nature had arisen for transferring his services at Balasore. He stated that there are many out-lets of the Employer Company. He stated that the Employer Company has recruited new workmen in this out-let. He submitted that being aggrieved with the said transfer order, he raised an objection, vide his letter dated 09-06-2008, but no satisfactory explanation was offered and his request was not conceded by the Employer. He therefore raised an industrial

dispute before the office of the Labour Commissioner, by his letter dated 26-07-2008, requesting to intervene and to revoke and set aside the transfer order dated 17-04-2008. The said dispute ended in failure.

4. The Workman contended that the transfer order dated 17-04-2008 issued to him is patently illegal and smacks of malice. He submitted that the transfer has been made with malafide intention of the Employer, to take sweet revenge on him, by adopting acts of harassment, victimization and unfair labour practice. He submitted that the transfer order has been issued to him, without having any locus standi and authority. He submitted that the Employer Company has recently adopted a tactics to clear off all the permanent workmen and old staff, by threatening them with transfer letters to far off places. He submitted that all those workmen, who refuses to resign and go, are issued transfer letters to faraway places. He stated that the present transfer order is the outcome of refusal to submit his resignation, by accepting three months' salary for the completed years of services.

5. He submitted that inspite of all the above difficulties, he was ready and willing to go at his transferred place. The Employer stated that however, he was unable to proceed at his transferred place at Balasore, as he was in deep financial crises. He submitted that presently, he is unemployed and has no source of income to maintain himself and his family. He submitted that he has made several attempts to get gainfully employed. He stated that however, till date, he has not succeeded in getting gainful employment. The Workman therefore prayed that the action of the Employer in transferring his services from its Goa establishment to Balasore Orissa, vide transfer order dated 17-04-2008, be held as illegal, unjust and bad-in-law and be set aside and quashed. The Workman further prayed that he be allowed to resume for his normal duties at the establishment of the Employer in Goa with immediate effect with full back wages and continuity in service.

6. The Employer resisted the claim of the Workman, by filing its written statement on 25-11-2010 at Exb. 6. The Employer, as and by way of preliminary objections, submitted that neither the Party I is a 'Workman' as defined u/s 2 (s) of the I.D. Act, 1947, nor the dispute referred for adjudication is an 'industrial dispute' as defined u/s 2 (k) of the said Act. The Employer submitted that the status of the Party I, as to whether a Jr. Officer-Photo Processing is a 'workman' as defined u/s 2 (s) or not, has to be adjudicated independently

and only after the decision on the said issue, an industrial dispute can be raised u/s 2 (k) of the said Act. The Employer submitted that the reference is made u/s 10 (1) (d) of the said Act to the Industrial Tribunal constituted u/s 7-A of the said Act and as such this Labour Court constituted u/s 7 of the said Act, has no jurisdiction to entertain and try the reference.

7. The Employer stated that it is a company registered under the provisions of Companies Act, 1956 in the State of Goa. The Employer stated that it was mainly engaged in the business of photography and also retailing in allied product and other electronic items. The Employer stated that it has outlets and Area Offices located in various states in India. The Employer stated that all the appointments of the personnel are made through the registered office at Goa and deputed to different states of the country, depending upon the requirements at the states.

8. The Employer stated that the Party I was appointed as a 'Jr. Officer-Photo Processing' w.e.f. 01-04-2007, vide letter of appointment dated 01-04-2007. The Employer stated that the services of the Party I were placed at its lab at Panaji. The Employer stated that in terms of clause 5 of the letter of appointment issued to the Party I, he was required to work at any of its offices and/or outlets/units in the union of India, without any added remuneration. The Employer stated that the Party I has accepted the terms and conditions of his service, as spelt out in the letter of appointment issued to him and reported as a Jr. Officer-Photo Processing with them. The Employer stated that as a Jr. Officer Photo Processing, the Party I was in-charge of the lab and was administrating and managing the D & P (Developing and Printing) operations at Panaji outlet. The Employer stated that there were three contract labours working under his supervision.

9. The Employer stated that prior to the appointment of Party I as a Jr. Officer-Photo Processing, he was working with M/s. Gokhatak Enterprises Limited from 01-04-1996 to 31-03-2007. The Employer stated that while working with the earlier company, the Party I had gained experience in printer operations. The Employer stated that the Party I had also acted as Lab In-charge. The Employer stated that the Party I had vast experience in the administration and management of the work of the lab. The Employer stated that they had agreed to take into account the period of service rendered by the Party I with M/s. Gokhatak Enterprises Limited, for computing his annual increments and retirement benefits like gratuity etc.

10. The Employer stated that its business was totally dependent on the business of its associate company, namely Phil Corporation Limited. The Employer stated that when M/s. Konica of Japan globally existed from the business of photography, the said Konica of Japan stopped supply of colour films and paper to the said associate company, due to which, the said associate company closed its union at Thivim, Bicholim and Valpoi in 2006. The Employer stated that there was invasion by digital technology in the business of photography, causing serious disruption of business in all its outlet. The Employer stated that the said factories eventually brought down the conventional photography business, which was the mainstay of the Employer in particular and all other companies in the group in general. The Employer stated that on account of the aforesaid factors, the associate company had closed three factories in the State of Goa, one factory in Karwar in the State of Karnataka and one factory in Dehradun in the State of Uttaranchal, resulting in loss of photographic business and loss of jobs in the entire groups.

11. The Employer stated that it had to make drastic changes in its business strategies, which resulted in closure of several unviable outlets and finding new avenues and locations in the changed business scenario and laying emphasis on diversified retailing etc. The Employer stated that its Panaji outlet, where the Party I was working was closed on 31-12-2007. The Employer stated that as the Party I was not having any specific work to do, after 01-01-2008, on closure of its Panaji outlet, it has decided to provide alternative job to the Party I in its other locations, where he could get full time job and salary, allowances and other benefits could be protected. The Employer stated that it has therefore transferred the Party I and posted at Balasore situated at Kamrun, Market Complex, Cinema Bazar, Balasore in the State of Orissa to work in its retail outlet. The Employer stated that the Party I was offered all the regular benefits available to the transferred place like disturbance allowance, daily allowance for boarding and lodging, until suitable accommodation was found by Party I, besides travelling expenses for self and his family members for travelling from Goa to Balasore.

12. The Employer stated that vide transfer order dated 17-04-2008, the Party I was required to report at Balasore on or before 02-05-2008. The Employer stated that the Party I however, did not report to the place of his transfer, by the scheduled date. The Employer stated that after waiting for a reasonable time, it has issued a letter dated

29-05-2008 to the Party I, informing him that he has not reported to the place of transfer and advised him to inform in writing, as to the cause of delay in reporting to the place of transfer. The Employer stated that the Party I was also informed that he will not be entitled for salary from 02-05-2008 till he reports for work at Balasore. The Employer stated that since the Party I did not report to his place of transfer, it has, by its letter dated 08-10-2008, informed him that his absence from the place of transfer is unauthorized and without pay.

13. The Employer stated that thereafter the Goa trade and commercial workers union wrote a letter dated 26-07-2008 to the Labour Commissioner, Government of Goa, Panaji, Goa, requesting for setting aside and quashing the transfer order dated 17-04-2008 and to reinstate the Party I with full back wages and continuity in service. The Employer stated that the Asstt. Labour Commissioner, Mapusa, Goa, without ascertaining as to whether the said union has locus standi to raise a dispute on behalf of the Party I, intervened in the matter, which ended in failure.

14. The Employer stated that during the pendency of alleged dispute with the Secretary Labour, some of its officers working in Goa resigned. The Employer stated that it had immediate requirement of a Jr. Officer in the retail outlet at Porvorim. The Employer stated that it has therefore reviewed the overall situations in the organization. The Employer stated that they took a decision to re-transfer the officer to retail outlet in Nova Cidade Complex, Ground floor, Alto-Porvorim, Goa. The Employer stated that it had sent a letter dated 13-08-2010 to the Party I, re-transferring him to Goa and advised him to report at the Porvorim outlet within three days of the receipt of the said letter. The Employer stated that the Party I received its said letter dated 13-08-2010, but did not report to its Porvorim outlet and continued to remain absent, even though, he had clearly stated in his letter dated 09-06-2008 that he should be allowed to work in Goa.

15. The Employer stated that initially, the letter dated 13-08-2010 was wrongly typed on the letter head of the Associate Company i.e. Phil Corporation Ltd. The Employer stated that however, the said letter was sent and signed by its Authorized Signatory as is clear from the page 2 of the said letter. The Employer stated that it has realized the mistake, after it was posted. The Employer stated that it has sent another letter dated 13-08-2010 to the Party I on its letter head along with a covering letter dated 17-08-2010 to clarify the said position.

The Employer stated that Party I has acknowledged the said letters dated 13-08-2010 and 17-08-2010. The Employer stated that the Party I was offered to report for work at Porvorim outlet immediately, after raising various issues. The Employer stated that the Party I however, did not report for work thereafter. The Employer stated that it has written another letter dated 16-09-2010 to him, informing that he has not reported for work and that since he had not obeyed the transfer order and reported at Balasore, he will not be entitled for wages and other benefits. The Employer stated that the Party I did not report for work even at Porvorim and remained absent. The Employer stated that the said act of the Party I presumes that the Party I gainfully employed elsewhere. The Employer stated that the Party I is not willing to report for work at Porvorim, where he has been re-transferred. The Employer submitted that the transfer of the Party I to Balasore is legal, just and bonafide and the Party I is not entitled to any relief. The Employer denied the overall case of the Party I, as pleaded by him in his claim statement and prayed for dismissal of the present reference referred by the Government of Goa.

16. Thereafter, the Party I filed his Re-joinder on 14-01-2010 at Exb. 7. The Party I, by way of Re-joinder, confirms and reiterates all his submissions, averments and statements made in his Claim Statement to be true and correct and denied all the statements, averments and submissions made by the Employer in its Written Statement, which are contrary to his Statement and averments made in his Claim Statement. The Party I stated that he was appointed by Phil Photo Ltd. and not by the Employer Company. He therefore submitted that the transfer order issued to him is not as per the said appointment letter dated 01-04-2007 is not binding on him. He stated that he was asked to assist this enterprise by Phil Photo Ltd. orally. He submitted that at the time of the closure of the Employer unit on 31-12-2007, the Employer did not offer any closure compensation to him. He submitted that the Employer transferred his services to Balasore in Orissa. He stated that after receipt of the letter of the Employer dated 13-08-2010, he went to report for his duties at Porvorim outlet but, he was told not to come and that the offer of employment has been given only on the paper to create evidence in the court of law. He submitted that the offer of employment dated 13-08-2010 is also improper and has been issued without having any authority.

17. Based on the pleadings filed by the respective parties, this court framed the certain issues on 21-01-2011 at Exb. 8. Among the said issues the following issue No. 4 has been treated as preliminary issue.

1. Whether the Workman/Party I proves that he is a "workman" as defined u/s 2 (s) of the I.D. Act, 1947?
2. Whether the Workman/Party I proves that there exists an "Industrial Dispute" as defined u/s 2 (k) of the I.D. Act?
3. Whether the Workman/Party I proves that the action of the Employer/Party II in transferring his services from Goa to Balasore-Orissa, w.e.f. May, 2008 is illegal and unjustified?
4. Whether the Employer/Party II proves that the Labour Court II has no jurisdiction to adjudicate the present order of reference issued by the Government of Goa u/s 10 (1) (d) of the act to the Industrial Tribunal constituted u/s 7-A of the said Act?
5. Whether the Workman/Party I proves that he is entitled to any relief?
6. What Order? What Award?

18. Thereafter, both the parties i.e. the Workman as well as Employer lead their evidence respectively oral as well as documentary, in support of the aforesaid issues and the matter was fixed for final arguments. It is at this stage the Employer filed an application for relying upon an additional documents, which was allowed by order of this court dated 03-08-2016 and case was adjourned for filing affidavit in evidence of the Employer to 03-10-2016. On 03-10-2016, the Workman remained present in person. The Employer represented by Ld. Adv. Shri P. Agarwal and undertaken to file an affidavit in evidence of their witness. Accordingly, case was adjourned to 17-10-2016. On 17-10-2016, the Workman alongwith Ld. Adv. Shri Suhas Naik as well as Ld. Adv. Shri P. Agarwal appearing for the Employer remained present and filed a joint application for consent award at Exb. 36, supported by a memorandum of settlement signed between both the parties u/s 2 (p) r/w 18 (1) of the I.D. Act, 1947.

I have carefully perused the said application for consent award, jointly filed by the parties. I am of the opinion that the said terms of settlement are beneficial to the Workman and hence consented for the same. Since the dispute under reference is settled between the parties, I hold that the dispute under present reference does not survive.

In view of the above, I proceed to pass the following order:

ORDER

1. It is held that in view of amicable settlement between the parties, the dispute as to whether the action of the Management of M/s. New Vision Imaging Private Limited, Thivim Industrial Estate, Mapusa, Bardez-Goa in transferring its workman Shri Sandeep Dessai, from Goa to Balasore-Orissa, with effect from May, 2008, is legal and justified, does not survive.
2. The workman Shri Sandesh C. Naik is not entitled to any relief.
3. No order as to costs.

Inform the Government accordingly.

Sd/-
(Suresh N. Narulkar)
Presiding Officer
Labour Court II

Department of Personnel

Order

No. 7/30/2014-PER

Read: Notification No. 7/30/2014-PER dated 23-12-2016.

The Governor of Goa is pleased to allot the following work/departments to Shri Sanjay Goel, IAS (AGMUT: 2004) in addition to his own duties with immediate effect and until further orders:-

1. Secretary (Education).
2. Secretary (Civil Aviation).

By order and in the name of the Governor of Goa.

Meghana V. Shetgaonkar, Under Secretary (Personnel-I).

Porvorim, 18th January, 2017.

Department of Public Works

Office of the Principal Chief Engineer

Corrigendum

No. 50/1/2017/PCE-PWD-ADM (II)/242

Read: (1) Order No. 50/1/2016/PCE-PWD-ADM (II)/205 dated 8th December, 2016.

(2) Corrigendum No. 50/1/2016/PCE-PWD-ADM(II)/231 dated 30th December, 2016.

In partial modification of the above referred Corrigendum, the words "Group 'A'" shown in the 3rd line of the 1st para, be read as "Group 'B'".

The rest of the contents remain unchanged.

By order and in the name of the Governor of Goa.

Uttam P. Parsekar, Principal Chief Engineer & ex officio Addl. Secretary (PWD).

Panaji, 16th January, 2017.



Department of Tribal Welfare

Directorate of Tribal Welfare

Addendum

No. 1-75-2016-17/ADMN/DTW/10515

Read: Order No. 1-75-2016-17/ADMN/DTW/9889 dated 26-12-2016.

Vide order referred above, the following content may be added in the first para so as to read as:-

"His pay may be fixed as per rules"

By order and in the name of the Governor of Goa.

Sandhya Kamat, Director & ex officio Joint Secretary (Tribal Welfare).

Panaji, 27th January, 2017.

Department of Water Resources

Office of the Chief Engineer

Order

No. 3/25-15/90/WR/1188

Read: Government Order No. 3/25-15/90/WR/76 dated 29-04-2015.

Government is pleased to extend the ad hoc promotion of following Assistant Engineers/Assistant Surveyor of Works (Civil) in Water Resources Department for the interim period of 7 months and 23 days w.e.f. 29-04-2016 to 21-1-2016, as the Officers are promoted on regular basis w.e.f. 22-12-2016 vide order No. 3/25-5/87/WR/1091 dated 22-12-2016.

1. Shri Bhanudas Rajaram Naik, Assistant Surveyor of Works.
2. Shri Sunil Raghunath Karmarkar, Assistant Engineer.
3. Shri Sharanabasappa Mahantappa Patri, Assistant Engineer.
4. Shri Lakkappa Satyappa Nadagaddi, Assistant Surveyor of Works.

This is issued with the approval of Goa Public Service Commission conveyed vide their letter No. COM/II/11/27(2)/2016/1598 dated 04-01-2017.

By order and in the name of the Governor of Goa.

S. T. Nadkarni, Chief Engineer & ex officio Addl. Secretary (WR).

Porvorim, 13th January, 2017.

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